

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT E. KINZEY, JR.,

Plaintiff,

v.

JEFFREY A. BEARD, Ph.D.,
FRANKLIN J. TENNIS, and
RICHARD S. ELLERS,

Defendants.

Case No. 3:05-CV-02198

(Judge Kosik)

MEMORANDUM AND ORDER

NOW, this 26th day of February, 2008, it appearing to the court that:

(1) Plaintiff, Robert E. Kinzey, Jr., an inmate formerly confined at the State Correctional Institution at Rockview, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 27, 2005;

(2) This matter was assigned to Magistrate Judge Malachy E. Mannion;

(3) On January 22, 2008, the Magistrate Judge filed a Report and Recommendation in which he recommends that the defendants' motion for summary judgment be granted;

(4) Plaintiff avers in his complaint that the defendants provided inadequate accommodations for his physical disability, and that his requests to be transferred to a facility that could accommodate his disability were either denied because of his custody status and security level, or ignored;

(5) The Magistrate Judge found that Plaintiff's allegations failed to state a cause of action for an Eighth Amendment violation. According to the Magistrate Judge, "[v]iewing all facts and reasonable inferences in a light most favorable to the plaintiff, he is unable to establish that the alleged deprivations were 'sufficiently serious' or that any

of the defendants acted with 'deliberate indifference' to a substantial risk of serious harm."

(6) No objections were filed to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a magistrate judge's report and recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150–53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. See Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987).

(8) Having considered the Magistrate Judge's Report, we agree with the analysis and the recommendation;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated January 22, 2008 is **ADOPTED**;

(2) The defendants' motion for summary judgment is **GRANTED**;

(3) The Clerk of Court is directed to enter judgment in favor of defendants and against the plaintiff; and

(3) The Clerk of Court is further directed to **CLOSE** this case and to **FORWARD** a copy of this Memorandum and Order to the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge